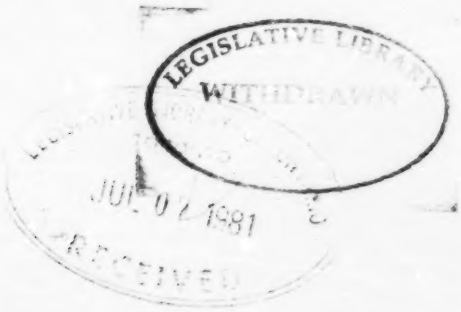
Alberta Women's Bureau
INFORMATION

WILLS AND ESTATES FOR ALBERTANS



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Alberta
WOMEN'S BUREAU

A MESSAGE FROM THE DIRECTOR

One of the most important rights you have as a Canadian citizen is the right to dispose of your personal property as you see fit. It is a right that can be exercised both during your lifetime, and after your death.

A properly prepared will is the only reliable means of ensuring that your possessions and property are taken care of according to your wishes, subject to the exceptions mentioned in this booklet.

However, if you are like many people, you may regard drawing up a will as a disagreeable tempting of fate, or as a task that can be put off indefinitely, or as something that applies only to the wealthy.

Attitudes such as these can cause a great deal of trouble in the long run. If illness or accident intervene, and you have not drawn up a will, your survivors could have to contend with difficulties such as costly court battles, family squabbles and unnecessary death costs. Furthermore, if you have no will stating how you want your property distributed after your death, then the law must intervene and allocate your possessions according to a strict formula, producing results that may bear no resemblance to your personal intentions.

Preparing a will is a universal responsibility even if you feel you have little of value to leave anyone.

In the first place, some of your possessions may be highly valued by members of your family or close friends. What you may think is worthless, they might consider a treasure. Not only monetary value should be considered, but articles which have been in the family for one or more generations -- or an article could be started on its way to becoming an heirloom. ("Family Choices" on page 11 suggests an effective method of ensuring that each of your belongings will be left to those people who would enjoy them most.) Secondly, any number of worthy charities would appreciate your contribution, no matter how small. Finally, and perhaps most importantly, regardless of its size, you worked hard to build up your estate and how it is allocated after your death should be your decision.

Drawing up a will enables you to pass on your assets to those you wish to benefit. It also allows you to select an executor to take care of such matters as protecting your

assets; paying your bills and taxes; selling your property at the best price; distributing insurance money; providing a home for your spouse; or holding money in trust for your children's education.

Regardless of your personal circumstances, preparing a will is a simple and inexpensive method of carrying out your intentions with a minimum of expense and delay.

This publication outlines the specifics of drawing up a will. It also explains how Alberta laws apply to such matters as individual inheritances and the guardianship of dependent survivors.

The Alberta Women's Bureau gratefully acknowledges permission to reprint the following:

"Family Choices", courtesy of Ethel Marliss, CBC Edmonton commentator.

"Your Personal Record and Estate Guide", courtesy of Michael Grenby, financial advisor, The Vancouver Sun, and MacMillan Bloedel Limited.

E. Phyllis Ellis

E. Phyllis Ellis
Director
Alberta Women's Bureau

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WILLS AND ESTATES FOR ALBERTANS

MAKING A WILL

A will should be made in contemplation of life. When set up properly, it is the key to true enjoyment of your property while you are alive, as it only takes effect upon your death. Property devolves (passes) on death in many ways: joint tenancy, contract (life insurance), deed, gift, The Intestate Succession Act, The Dower Act, and by will. Bear in mind the fact that your will or The Intestate Succession Act will decide how your property will devolve other than by the aforementioned methods.

WHY HAVE A WILL?

It is wise to have a will, but some people need convincing as to its importance. Without a will there is no personal direction as to disposal of the person's estate after death. Whether possessions are few or many, most people have an idea regarding how they would like to dispose of them. For example, Mrs. Smith may want her daughter to have her jewellery. Without explicit directions in a will, no one really knows this. Practically speaking, where there is a will, less time and cost is involved. Intelligent planning avoids excess estate taxes and distributes the estate quickly and efficiently to the beneficiaries of your choice.

Alberta's Survivorship Act must also be considered. When two or more persons die in circumstances rendering it uncertain which survived the other, the younger is presumed to have survived the older. If the wife is younger and she is without a will, she has died intestate. For example, if the husband's property all goes to the wife's estate, it is added to her separate property and passes to her next of kin. This possibility can be eliminated with a common disaster clause, providing an alternate list of beneficiaries if the spouse does not survive by a certain number of days (usually thirty).

WHO CAN MAKE A WILL?

Any mentally competent person eighteen years of age or older may make a will. Wills made by persons suffering from delusions affecting the nature, value or ownership of assets, or warping the natural affections, may not be recognized. Either fraud or undue influence may also render a will invalid.

A will may be revoked at any time, either by rescinding the old will, making a new one, or by deliberately destroying the old one. A person's will is normally revoked upon marriage, unless the will specifically states that it is being made in contemplation of that particular marriage. It may also lose its effectiveness, wholly or partially, by the death of persons named as beneficiaries or if the person, while living, disposes of property which had been mentioned in the will.

Wills are changed either by making a completely new will or by making a codicil (a document in the form of a will amending the original will).

Generally speaking, once made, a will should be reviewed every five years, or sooner if circumstances change.

WHO TO SEE ABOUT DRAWING UP YOUR WILL

The person best qualified to draw up your will is your lawyer. Legal fees for this service vary, depending upon the complexity of the will. You should discuss the matter of fees in advance with your lawyer.

Your lawyer, banker or executor will keep a copy of your will in her/his possession. It is important to advise immediate members of your family where the original will is located (preferably in a safety deposit box or other fireproof storage). One hidden under the mattress may not turn up for fifty years, in which event your estate will have been divided under The Intestate Succession Act, with no regard to your recorded wishes.

Another alternative is to have your will deposited with the Clerk of the Court of Alberta Attorney General. A person wishing to do so must enclose the will or codicil in a sealed envelope for delivery to the Clerk of the Court either personally or by someone specifically authorized to deposit it on behalf of the testator (person making the will).

The will or codicil may not be removed, copied or inspected during the person's lifetime except by that person or, in some cases, by a solicitor (upon order of a judge) acting under the written authority of the person who made the will.

For further information on the deposit of a will of a living person with the Clerk of the Court, contact:

Clerk of the Court
Law Courts Building
Edmonton, Alberta
T5J 0R2

Telephone: 423-7110

It is wise to keep a copy of your will with your important papers, and to list on each copy where the original will is being held.

If moving to another province or country, check to learn if the laws regarding wills are the same. For example, a holograph will is recognized in Alberta, but not in all Canadian provinces.

WHAT ARE THE TYPES OF WILLS?

The ordinary form of will (called a solemn will) is signed at the end by the testator (maker) in the presence of two witnesses who must sign in the presence of the testator and each other. The witnesses must not be persons or spouses of persons who will receive anything under the terms of the will, and preferably should be younger and easily located.

Costly mistakes can be avoided if the will is executed in the lawyer's office. Beware of printed forms. Avoid amateur effort.

Another form of will recognized by Alberta courts is the holograph will. This is a will that is completely in the handwriting of the testator and needs no witnesses. Many other courts do not recognize a holograph will, so the person must be governed by the laws of the jurisdiction in which the estate is situated. A holograph will is NOT RECOMMENDED except as a temporary measure.

Great care must be taken in wording a will to ensure that it has the legal effect intended, because when the time comes to give effect to it, the maker is not available to explain exactly what was meant. Remember, the will is to dispose of property acquired during the maker's entire lifetime.

Because of the many legal problems involved, a will prepared by a person unfamiliar with the details of the laws relating to wills and the transmission of property, may be ineffective in disposing of the testator's property. For example, a provision that is of uncertain meaning or that may result in

property being tied up for an indefinite period, may be invalid. In consequence, a will prepared by a person without full knowledge of the relevant laws is DEFINITELY NOT RECOMMENDED. A very high proportion of "home-made" wills cause unnecessary delay, uncertainty and expense.

HOW THE WILL DISPOSES OF YOUR PROPERTY

There are several ways to leave assets under a will, and Alberta law applies certain technical rules to the methods you choose.

The important consideration is to remember the alternatives available and the methods you have used in your will so that subsequent actions will not change the meaning or effect of the will.

For example:

1) Father "A" wants to leave his land to son William, the only child interested in farming. In his will, he directs his executors to rent the land, pay the net income to his wife for her lifetime, and on her death to transfer the land to William. After the will is made, the land is expropriated for a factory site and at Father "A's" death there is no land, only a house in the city and cash in the bank.

   Without a new will to meet the changing conditions, William gets no interest in the former farmlands and the widow may get nothing from the income direction unless the residuary clause benefits William and the widow.

2) My will provides, "I leave my grand piano to my daughter Katherine." This particular wording means that if I own a grand piano at death, my daughter Katherine will receive the grand piano. If I do not own a grand piano at death, Katherine receives nothing, no matter how talented she may be.

   On the other hand, if my will reads, "I leave a grand piano to my daughter Katherine," then even if I did not own one at the date of my death, my executors would be obliged to buy a grand piano at the extate's expense and give it to my daughter Katherine.

3) I wish my son to attend university or agricultural college and to provide an incentive I state in my will, "If at my death, or within (blank) number of years thereafter my son John attends a university or an Alberta agricultural college, then I leave the sum of $10,000 in

trust to my executors to pay his tuition, board, lodging, books, etc., and upon graduation to pay the balance remaining to him for his own use absolutely (or to someone else if he dies or fails to graduate)." This is a valid and enforceable bequest.

However, if I foolishly refuse to take legal advice and draw up my own will which merely states, "I leave the sum of $10,000 to my son John, trusting that he will use this money to obtain a university degree or finish agricultural college in Alberta, and farm lands which his grandfather homesteaded, etc.", the court would interpret this type of bequest as an absolute gift of $10,000 to son John, with no strings attached, and he would not be obliged to attend university or agricultural college or graduate therefrom.

As these examples illustrate, technical rules of interpretation are necessary to determine unforeseen circumstances. Your lawyer, aware of these rules, can assist you in the proper wording and alternatives available to provide for the probable changes in your particular circumstances.

OWNERSHIP TRANSFER BY WILL

Transfer by will has certain disadvantages, especially when it is used to transfer the family farm or business on to the next generation. These are:

1) No one can predict when transfer by will is to take place. The result is a period of uncertainty regarding the transfer, which could extend to thirty or forty years.

2) A will can be changed by the maker at any time, providing the person is still mentally competent, so it is not a definite financial arrangement until made final by death and legal action through the probate court.

3) Many times the parents making the will need money from the sale of the property to live on in their declining years. This will does not furnish any money to them. (Certainly the parents can obtain money for their declining years from the sale of their property, but their will must be altered to match their change of plans.)

4) The legal cost, and often tax obligations for the estate, will be larger if the will is used to transfer all the property than if the farm is sold to the heirs.

WHAT HAPPENS WHEN A PERSON DIES WITHOUT A WILL?

When a person dies without a will or leaves property that is not disposed of by a will, The Intestate Succession Act provides how the estate is to be distributed. For people failing to make a will, the provincial government has made a will for them. Unfortunately, this "will", The Intestate Succession Act, cannot take into consideration the needs of each particular family and some unfair situations may result.

Effective January 1, 1976, if a person leaves an estate with a net value of less than $40,000, the entire estate goes to the surviving spouse. Where the net value of the estate exceeds this amount, the surviving spouse receives $40,000 plus interest at 5% per annum until paid and the remainder is divided:

1) if one child, half to the surviving spouse and half to the child

2) if more than one child, a third to the surviving spouse and two-thirds divided equally amongst the children.

If a son or daughter is dead but survived by children, they receive what would have been the parent's share. Where there are no children, the surviving spouse receives the entire estate.

Where there is no surviving spouse or descendants, the estate goes to the deceased's nearest kin, who are determined in the following order: parents (or the surviving one parent); brothers and sisters in equal shares (or if dead, their children will inherit their share); surviving nephews and nieces; grandparents; aunts and uncles; cousins.

Where no heirs survive the deceased person, the estate goes to the Crown in right of Alberta under The Ultimate Heir Act.

EXECUTORS AND ADMINISTRATORS

An executor is appointed under a will and has the right to act immediately upon death. An administrator may only act when appointed by a court and this may take months. Delay is usually caused by many factors, such as who will be the administrator, what are the assets of the estate, posting of a bond, etc. An administrator is required where there is no legally enforceable will or the executor in a will is dead, incapable, or refuses to act. Careful thought should be given to selection of an executor for your estate, and the matter should be discussed with the person you intend to appoint as to whether s/he would care to act as an executor.

For example, it would not be wise to appoint an executor much older than yourself, in case such person should predecease you, with resulting complications. To avoid additional costs of administration, your executor should be located in Alberta. For more detailed information regarding the responsibilities of an executor or administrator, request a free copy of A Guide to Probate Procedure from the Alberta Women's Bureau.

The services of a trust company or the Public Trustee should be considered because through their experience in estate planning they can offer advice which could result in substantial tax savings, as well as avoidance of possible administrative problems. The fees payable to the executor or administrator are the same regardless of whether a trust company, the Public Trustee, or an individual is named.

Executors and administrators have three primary duties in handling an estate:

1) to gather all assets of the estate

2) to pay all legal debts, taxes and expenses of the estate

3) to pay out the balance of the estate in accordance with the terms of the will, or under provisions of The Intestate Succession Act, as the case may be.

They may enter into possession of the estate's property; may bring legal action against the debtors of the estate; may enforce demands; may give effective receipts and discharges; may pay the testator's debts and, in effect, perform all directions of the will or The Intestate Succession Act. The first step after receiving grant of probate or administration is that of filing income tax and completing succession duty returns, if any.

There is additional legislation in Alberta that can affect how an estate is disposed of.

The Dower Act gives a surviving spouse a life interest in the "homestead" (the land on which the dwelling occupied by the owner was situated) of the deceased person, regardless of the terms of the will or the provisions of The Intestate Succession Act. This entitles the spouse to either occupy the land (not more than four adjoining lots in one block in a city, town or village, or not more than one quarter section of land) during his or her lifetime, or to rent the land and receive the income. However, the surviving spouse is obligated to pay the taxes and to keep the property in a reasonable state of repair.

Under The Family Relief Act, the surviving spouse is entitled to apply to the court for additional provision for maintenance and support, if s/he is not named as the sole beneficiary in the partner's will. This right also applies to the dependent children of the deceased. The executor or administrator is therefore required to inform the spouse of his or her rights in the matter, and to give notice to the Public Trustee of the rights of the surviving dependent children. In the case of the latter, the Public Trustee may apply to the court to obtain the further maintenance and support from the estate of the deceased.

Under certain circumstances, The Matrimonial Property Act allows a surviving spouse to apply to the court for a Matrimonial Property Order, if the spouse is not the sole beneficiary in the partner's will. Again, the executor or administrator must advise the spouse of his or her rights in this regard.

An executor may resign providing no steps whatsoever have been taken in the affairs of the estate. This even applies to funeral arrangements. If the executor lives in Alberta, it is not required that a bond be posted.

Since an administrator is appointed by the court, a bond equal to twice the value of the estate must be posted. There is a priority of persons who may be selected by the court as an administrator. In order of importance they are: husband or wife, father or mother, child, brother or sister, uncle or aunt, nephew or niece, other next-of-kin. This priority list is strictly adhered to by the courts, and applicants applying for a grant of administration of an estate must fulfill certain conditions if they wish to vary it. Where there is uncertainty as to the person entitled to a grant of administration, or undue delay exists, the court has the power to grant administration to the Public Trustee or some other appropriate person.

THE PUBLIC TRUSTEE

The Public Trustee may, under statute:

a) where no person has been appointed, act as guardian or custodian of the estate of an infant

b) act in the administration of estates

c) act as custodian of property of missing persons, convicts and deceased persons

d) upon order of the court, act as judicial trustee of the estate of a deceased person

e) either alone or jointly with any other person or persons, accept and carry out a trust where he is appointed for that purpose

f) act as a guardian of the estate of an infant made a ward of the Province under the provisions of The Child Welfare Act

g) act in such other capacity and do such other acts as authorized or required to do by Rules of Court, order of a judge or the Lieutenant-Governor-in-Council, or by The Public Trustee Act

h) act as the committee of the estate of a mentally incompetent person.

He is a barrister and solicitor with at least ten years standing, responsible to the Department of the Attorney-General, Government of Alberta, and has offices in Edmonton and Calgary.

The Public Trustee is entitled to the same costs as are payable to counsel and solicitors, and to administration fees either as agreed upon by adult beneficiaries or as determined by the court upon notice to all beneficiaries concerned.

Many Albertans who have no relatives or principal beneficiaries resident in the province take advantage of the Public Trustee's professional skill and knowledge and appoint him as executor of their will.

GUARDIANS

It is important to realize that there are two kinds of guardians. In Alberta we may, by will, appoint a guardian of the person of our minor children (under eighteen years of age). This guardian is the person you have selected, with his or her consent, to act as a substitute parent. Care should be given to seeing that the new environment will be as close to your present home as possible in religion, discipline, health and education. Grandparents should not automatically be appointed as guardians. It may be advisable to retain the grandparent relationship with the children. Orphaned children will need their grandparents as well as substitute parents. The courts will approve the selection, as long as someone selected is not deemed by the court to be an unfit guardian.

Matters relating to the child's separate estate or inheritance are determined by the trustee named in the parent's will (if any), the Public Trustee, or a guardian of the infant's estate appointed by the District Court after posting a bond.

One of the most important reasons for making a will is to appoint guardians for your minor children. Some of the most heart-rending court cases on record are those where a number of relatives apply for guardianship of the person of the orphaned children. It divides the family (perhaps forever), upsets the children who have already been through a great deal, and costs the estate money through the court costs involved.

As well, under The Dependent Adults Act, the court may, upon application, appoint either a plenary (absolute) or a partial guardian, for persons eighteen years of age or older if satisfied that the person is unable to care for himself, unable to make reasonable judgements about matters relating to his estate, and in need of a guardian.

Any person eighteen years of age or over, who consents to do so, is eligible to be a guardian of a dependent adult if the court is satisfied s/he will act in the best interests of the dependent adult, does not have conflicting interests with the dependent adult's interests, is of good character, and is a resident of Alberta.

The plenary guardian is empowered to decide where the dependent adult is to live and with whom, if and where s/he should work, the extent and nature of social activities engaged in, the extent and nature of educational training, and the kind of health care required. The plenary guardian also has the authority to make decisions on such day-to-day matters as diet and dress. However, the power to administer the estate or finances of the dependent adult is not included. The partial guardian will only have control over some of these.

Under The Dependent Adults Act, the guardian is bound to exercise power and authority in the best interests of the dependent adult and in such a way as to encourage independence in personal care and of making reasonable judgements in personal matters.

Matters relating to the estate and finances are determined by trustees. For children, the child's separate estate or inheritance is determined by the trustee named in the parents' will (if any), the Public Trustee, or a guardian of the infant's estate appointed by the Court of Queen's Bench after posting a bond.

For dependent adults, their estate is determined by the Public Trustee, or a trustee appointed by the Surrogate Court. A trust company may also be appointed.

FAMILY CHOICES

Dear

Several times over the past years I have observed the problems that can arise in families when children are left to divide the personal possessions of deceased parents.

Usually, if there is money and/or property, this is equally distributed amongst the heirs through the directives in the will, with few if any problems.

The items that are of no, or little, significant monetary value frequently cause the biggest hassles. This of course is a result of the personal and emotional ties that children normally have toward old family bric-a-brac, furnishings, pictures, ornaments, books, etc., etc., etc.

It saddens me to see rifts between brothers and sisters over the division of these personal goods and I have no wish that any of you should be caught in such an emotional bind. It would grieve me deeply if I felt that some day the "junk" I have collected over the years would be a divisive factor in your future relationships.

For a long time I have been considering a means of settling this concern, and I hope the method I have now evolved will be an expedient one.

What it amounts to is that I plan to draw up a list of what goes to who in a clearly designated manner.

If some far away day you are dissatisfied with this division, it will be me rather than each other at whom you can direct your negative feelings. Since I won't be around when that day comes, it won't concern me unduly.

Please don't be alarmed or begin to wonder if I am in ill health or feeble mind. This is in no way the case! As a matter of fact, both your father and I are in excellent

..../2

health at this point in time and expect to be around accumulating more junk to add to this list in the ensuing years.

It is precisely because I am alert and attune to life and sensitive to the unpredictableness of the future that I have elected to work out the disposal of my lifetime's accumulation of odds and ends.

Will you then co-operate with me in this by helping me to make the best choices possible for each of you.

The enclosed list designates in part most of the items I can think of that may or may not be of interest to you. I will make my ultimate decisions on the basis of your choices.

I dearly love each of you and I firmly believe that this device may prevent hard-feelings and bitterness between you in some distant day.

You are intelligent and aware individuals and I know you will recognize the realistic, practicality of this plan. I hope you will complete and return the enclosed choice list as soon as possible. Whether you do or not, I shall nevertheless carry through with this idea and a clear-cut directive, designating how things are to be divided will be completed and placed with my will.

Much love to each of you,

Mother

Please designate and/or describe in the following spaces any items in each category of special importance to you.

PLEASE CHECK ONE

	Not Interested	Interested	Keenly Interested
Family Pictures			
Other Pictures			
Books			
Ornaments			
Dishes and Silver			
Dinner Sets			
Records			
Lamps			
Clocks			
Living Room Furniture			
Dining Room Furniture			
Kitchen Furniture			
Bedroom Furniture			
Antique Items			
Cameras and Projector Equipment			
Crocheted Bedspread			
Lace Tablecloths			
Miscellaneous (Any and all other items that are of real or sentimental value to you that I may have missed or overlooked.)			

Your Personal Record & Estate Guide

Name _____

Place and date of birth _____

Parents (full names & birth places) _____

_____

Marriage (full name of spouse, date and place of ceremony) _____

_____

Children (name, place and date of birth) _____

_____

_____

_____

_____

Important Numbers

Social Insurance Number _____

Credit Cards _____

_____

_____

_____

_____

Driver's License _____ Car Licence Number _____

Naturalization papers/passports _____

_____

Pension Cheque _____

C.P.P. Cheque _____ O.A.S. Cheque _____

Other(s) _____

List Of Family Advisers

Name	Address	Telephone	Remarks

Power of Attorney _____

Executor/Executrix _____

Doctor _____

Lawyer _____

Minister _____

Bank _____

Insurance Underwriter _____

Trustee _____

Employer Contacts _____

_____

Other(s) _____

_____

Arrangements upon death _____

_____

What funeral arrangements have been made? _____

_____

_____

Undertaker/Memorial Society _____

Location of cemetery plot _____

Location of deed _____

Instruction re: disposition of body and/or organs _____

_____

_____

Location Of Important Items

Document	Location
Safety deposit box(es)	
Key to box(es)	
Insurance policies	
Wills	
Real estate papers	
Loans receivable	
Loans payable	
Title car	
Stocks	
Bonds	
Certificates	
Income tax records	
Property tax records	
Birth certificate	
Marriage certificate	
School records	
Bank books	
Naturalization papers/passports	
Charge plates	
Auto papers	
Jewellery	
Other(s)	

Insurance Inventory

Life Insurance

Company	Policy Number	Death Benefits	Cash Surrender Value on Retirement	Address

Medical Insurance (include any extended health plan)

Company	Policy Number	Address	Remarks

Dental Insurance

Company	Policy Number	Address	Remarks

Automobile Insurance

Company	Policy Number	Agent	Address	Remarks

Property/Household Insurance

Company	Policy Number	Agent	Address	Remarks

Other Insurance

Company	Policy Number	Agent	Address	Remarks

Real Estate

Bank/Trust Accounts

Type	Number	Name	Address

Date form completed:

Review and update at least once a year